P.R. No. 1675/06
Presented by Shri Kumar Das
dated 16-05-06

Single Bench

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

SECOND APPEAL NO. 271 / 2006 (S.B.)

Appellant (Plaintiff) : Amir Khan
S/o Sikhandar Khan
Aged about 63 years,
R/o Village Ambagarh Chowki, Tehsil – Ambagarh Chowki,
Dist : Rajnandgaon-(C.G.)

Versus

Respondents (Defendants) :
1. Sanjay Singh
S/o Lal Bhishm Deo Shah,
Aged about 30 years

2. Sanjiv Shah
S/o Lal Bhishm Deo Shah,
Aged about 32 years,

Both R/o Village Ambagarh Chowki, Tehsil – Ambagarh Chowki, Dist : Rajnandgaon-(C.G.)

3. State of Chhattisgarh
Through – Collector
Rajnandgaon-(C.G.)

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SECOND APPEAL U/S 100 OF THE CIVIL PROCEDURE CODE

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A.No.271/ **सन् 2006**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

22/01/2007

Shri Anoop Majumdar, counsel for the appellant.

Shri Akhil Agrawal, Panel Lawyer for the State/respondent No.3.

Heard on admission.

The appellant/plaintiff herein is aggrieved by the judgment and decree dated 24-03-2006 passed by the II[nd] Additional District Judge, Rajnandgaon in Civil Appeal No. 47-A/2005 whereby the judgment and decree dated 29-09-2004 passed by the Civil Judge Class –I, Ambagarh Chowki in Civil Suit No. 5-A/2004 dismissing the plaintiffs suit was affirmed.

The appellant-plaintiff herein filed a Civil Suit No. 5-A/2004 for directing the respondents' No. 1 & 2/defendants to execute the registered sale deed on the basis of an un-registered document dated 03-08-1989 alleged to have been executed by Lal Bhishm Dev Shah, father of the respondents No.1 & 2/defendants.

The respondents No. 1 & 2/defendants were proceed *ex parte* in the lower Court. However, since the appellant/plaintiff failed to prove the execution of the agreement dated 03-08-1989 by Lal Bhishm Dev Shah, the suit was dismissed. In Civil Appeal No. 47-A/2005 judgment and decree passed by the lower Court was affirmed.

Shri Anoop Majumdar, learned counsel for the appellant was heard on I.A. No. 4009/2006 which is an application under Order 41 Rule 27 of C.P.C. for bringing on record the affidavit of one Ranjeet Singh. The appellant/plaintiff had sufficient opportunity of doing so not only before the lower Court but also before the first Appellate Court. The appellant/plaintiff having failed to do so, I am not inclined to grant the prayer sought in the application at this stage.

Accordingly, the application I.A. No. 4009/2006 is dismissed.

I have perused the record of Civil Suit No. 5-A/2004 as also the un-registered document dated 03-08-1989. I have also perused the evidence led by the appellant/plaintiff before the lower Court. That portion of the document dated 03-08-1989 which bore the signature of the executor has been eaten by

P.T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

ants. The appellant/plaintiff did not examine the surviving attesting witness to prove the execution of document by Lal Bhishm Dev Shah. Not only this, the appellant/plaintiff also did not testify that the document Ex.P./1 was signed by Lal Bhishm Dev Shah.

In this view of the matter, there was no legal evidence to prove execution of the document Ex.P./1 by Lal Bhishm Dev Shah. The learned lower Court was therefore wholly justified in dismissing the suit. The finding recorded by the first Appellate Court, therefore, can also not be faulted with.

Having thus considered the aforesaid circumstances with utmost circumspection I am of the considered opinion that no substantial question of law is involved in this appeal.

In the result this appeal is dismissed at the stage of admission. There shall be no order as to costs.

In view of the above, M.(C).P. No. 1530/2006 for grant of interim relief and I.A. No. 4008/2006 for amendment also stand disposed of.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Tumane

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